*****

In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 17.11.2006.

Ismail (deceased) through LRs. and another .... Appellants.

vs

Smt.Sadiqan and others .....Respondents.

Coram Hon'ble Ms. Justice Kiran Anand Lall.

Present: Mr.Gurmeet Singh,Advocate for
Mr.R.S.Bains,Advocate,for the appellants.
Mr.Rajesh Garg,Advocate, for the respondents.

Kiran Anand Lall, J.

This appeal is directed against the judgment and decree of the first appellate court vide which the judgment and decree of the trial court, were set aside, and the suit of appellants was dismissed.

As per facts given in the plaint, Smt.Ghunni was owner of 1/8th share in the land measuring 68 kanals 6 marlas, detailed in para no.3 thereof. A private partition, later, took place between the co-sharers, wherein land measuring 8 kanals 6 marlas, comprised in khasra no.2297/6-18, 2286 min/ 1-8, fell to her share. A memorandum with regard thereto was brought into existence, on 13.11.1980, and report no.233 dated 24.1.1981 was also got entered in the record of the Patwari Halqa. After sanction of mutation no.10577, the factum of partition found place in the jamabandi for the year 1983-84, also.

Smt.Ghunni died in the year 1983, leaving behind three sons, Abdulla, Abdul Rehman, and Ismail, and three daughters, Aishan, Halima and Zubedan. In the suit, Ismail and Aishan were plaintiffs, Abdul Rehman

*****

and his wife, Sadiqan were the contesting defendants, and Abdulla, Halima, and Zubedan were proforma defendants. The case of the plaintiffs was that Sadiqan colluded with the revenue authorities and got a mutation, bearing no.10664, sanctioned in her favour, on the basis of an oral gift, allegedly, made by Ghunni, in her favour, in respect of the suit land. Ghunni, according to the plaintiffs, never made any such gift in favour of Sadiqan nor she delivered possession of land to her. The mutation proceedings pertaining to the gift were also fake. It was further pleaded that the parties are governed by Mohammadan law, and as per that, the plaintiffs, who are son and daughter of Ghunni, inherited the suit land, to the extent of 1/3rd share, and the remaining land was jointly inherited by defendants no.2 to 5. However, after the death of Ghunni, Sadiqan entered into forcible possession of the suit land. The plaintiffs asked her, many a times, to deliver the possession of land, as owners to the extent of 1/3rd share, to them but she refused. Therefore, they filed a suit for declaring them to be owners of the total land, to the extent of 1/3rd share measuring 8 kanals 6 marlas, and also for its joint possession.

Respondents no.1 and 3 contested the suit. According to them, the suit was not maintainable in the form it was filed. If the appellants were to challenge the gift, a suit for cancellation of the gift should have been filed. Plea of misjoinder of parties was also taken up. On merits, it was pleaded that respondent no.1, Sadiqan, had been serving Ghunni during her life time, and, being pleased with her services, the latter made an oral gift of her land, in the month of November 1980, to her, voluntarily and in the presence of Mohd. Khalil and Sadiq Ali, witnesses. She accepted the oral gift and came into possession of land, as owner, at that very time. A memo

*****

of (oral) gift, which was scribed by a deed-writer, Vijay Kumar Gupta, and attested by two witnesses, Mohd. Khalil and Abdul Rashid, was also executed by Ghunni, in favour of Sadiqan, who, too, thumb marked it. However, the mutation got entered by Sadiqan on the basis of this gift, was rejected by A.C.IInd Grade, Malerkotla. She challenged the order of rejection in appeal, where Ghunni filed an affidavit before the appellate authority viz. Collector, Malerkotla, admitting not only the factum of gift made by her but also the execution of memo of (oral) gift dated 30.1.1981 and delivery of possession of land to her (Sadiqan) in pursuance thereof. She made a statement also in this regard, before the Collector. The latter, thereupon, accepted the appeal vide order dated 26.5.1981 and sanctioned mutation no.10664, in favour of Sadiqan, on the basis of the (oral) gift. The appellants, thereafter, filed an appeal before the Commissioner which was accepted vide order dated 3.6.1983. Sadiqan went up in revision against that order, which was decided in her favour vide order dated 4.3.1986, and the order of the Collector dated 26.5.1981, sanctioning mutation on the basis of oral gift, was upheld.

The trial was held in respect of the following issues, arising out of the pleadings of the parties:-

1. Whether the plaintiffs are owner in possession of the suit land on the basis of natural succession as alleged in para No.4 of the plaint, if so its effect? OPP
2. Whether the plaintiffs are entitled to injunction as prayed for? OPP
3. Whether the defendant no.1 is owner in possession of the suit land on the basis of

*****

valid gift as alleged in the para no.4 of the written statement? OPD

4. Whether the suit is bad for mis-joinder of parties? OPD

5. Whether the suit is not maintainable in the present form? OPD

6. Relief.

The trial court discarded the story of oral gift and decreed the suit, holding appellants to be owner in joint possession, to the extent of 1/3rd share in the suit land. But, in appeal filed by Sadiqan (respondent no.1), the learned Additional District Judge set aside the judgment and decree of the trial court, dismissed the suit, and held her to be owner in possession of the disputed land, on the basis of the oral gift.

Ismail and Aishan appellants (plaintiffs), thereafter, filed this regular second appeal.

To start with, it is material to note that neither the grounds of appeal contained any substantial question of law nor any such was placed on file, subsequently. In fact, I find, that none arises in this appeal.

It is admitted case of the parties that the suit land had fallen to the share of Ghunni in November 1980, in a private partition which had taken place between the co-sharers, and mutation no.10577 was also sanctioned in her favour, in this regard. The appellants had, however, based their claim to the inheritance of Ghunni, in this suit, being her children.

While throwing a challenge to mutation no.10664, which was sanctioned in favour of Sadiqan, on the basis of gift made by Ghunni in her favour, the case of appellants, in the plaint, was that Ghunni had never made

*****

any such gift nor she ever delivered possession of land in pursuance thereof. While dubbing the mutation proceedings as fake and a paper transaction, it was pleaded that Sadiqan had taken forcible possession of the land. The specific stand of the contesting respondents, in the written statement, was that Ghunni had made an oral gift of her land, to respondent no.1, of her own accord and in the presence of two witnesses, Mohd.Khalil son of Mohd. Ismail and Sadiq Ali son of Mohammadu of Malerkotla, and had executed a memo of (oral) gift also in this regard, which was scribed by a deed-writer, Vijay Kumar Gupta. It was further pleaded that Sadiqan had accepted the gift, entered into possession of land, as owner, and since then had been continuing in its possession. Details of mutation proceedings, which had finally ended in favour of Sadiqan, were also given and a specific reference was made to the statement of Ghunni, made before the revenue authorities with regard to the oral gift and also to the affidavit filed by her, on the point. But, it is significant to note that the appellants did not rebut any of these pleas, by filing replication or rejoinder to the written statement. In other words, the specific pleas taken up in the written statement, about the oral gift and delivery of possession of land, had remained un-rebutted, and as such, the same would be deemed to have been admitted by them.

Learned counsel for the appellants contended that since the property gifted was of a value more than Rs.100/-, it could be gifted through a registered gift-deed only, and the oral gift set up by Sadiqan has no value in the eyes of law. The contention, I may state, is without any merit. The legal position in respect of a valid gift under Mohammadan law (to which parties belong) is well settled, and that is, that it is not required to be made in writing, and consequently, it need not be registered also, under the

Registration Act. The Apex Court held in 1995 (2) Civil Court Cases 42 (SC) *Mohboob Sahab vs. Syed Ismail and others*, in respect of a valid gift under Mohammandan Law, that:

> "S.147 of the Principles of Mahomedan Law by Mulla, 19th Ed., Edited by Chief Justice M.Hidayatullah, envisages that writing is not essential to the validity of a gift, either of movable or of immovable property. Section 148 requires that it is essential, to the validity of a gift, that the donor should divest himself completely of all ownership and domination over the subject of the gift. Under s.149, three essentials to the validity of the gift should be, (i) a declaration of gift by the donor, (ii) acceptance of the gift, express or implied, by or on behalf of the donee, and (iii) delivery of possession of the subject of the gift by the donor to the donee as mentioned in s.150. If these conditions are complied with, the gift is complete."

In the case in hand, all the said three ingredients, which constitute a valid gift under Mohammadan law, stood proved on the basis of evidence available on record. Therefore, in view of the law laid down by the Apex Court, the oral gift of land made by Ghunni in favour of Sadiqan (respondent no.1) was perfectly valid, in the eyes of law, and as such, no fault can be found with the finding of the first appellate court, in this regard. The authority relied upon by the learned counsel for the appellants, AIR 1926 Lahore 372 *Maula Bukhsh vs. Hafiz-ud-Din and others*, which is contrary to the said enunciation of law made by the Apex Court, need not,

*****

therefore, be discussed.

The judgment and decree of the first appellate court cannot, thus, be faulted on any score. The same are, accordingly, upheld and the appeal is dismissed, leaving parties to bear their own costs.

17.11.2006. (Kiran Anand Lall)
vs. Judge.